LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 31 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-210

LAURENCE H. FROMMHAGEN, Petitioner,

vs.

BYRON N. SCOTT, Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the District of Columbia Court of Appeals

LAURENCE H. FROMMHAGEN
Pro Se
Post Office Box 326
Soquel, California 95073

Subject Index

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statement of the case	2
Reasons for granting the writ	7
I. The decision below in regard to the legality and admissibility of consensual recordings of telephone conversations conflicts with the decisions of this Court and other Courts of Appeals	8
II. The decision below barring admission of a sworn extrajudicial statement is in conflict with the decisions of this Court and other Courts of Appeals and constitutes a radical and unacceptable departure from accepted judicial process	10
Conclusion	12
Appendix	i

Table of Authorities Cited

Cases	Pages
Butler vs. Southern Pacific Co. 431 F2d 77, 80 (1970)	11
Carnes vs. United States 295 F2d 598 (1961), cert den 369 US 861, 8 L Ed 2d 19, 82 S Ct 949	8
Gonzales vs. Landon 215 F2d 955 (1954)	11
Great American Ind. Co. vs. Rose 242 F2d 269	12
Harrison vs. United States 42 F2d 736 (1930)	11
Frank R. Jelleff, Inc. vs. Braden 233 F2d 671 (1956)	12
Meredith vs. Gavin 446 F2d 794 (1971)	9
People vs. Canard 257 C.A. 2d 444 (1967)	9
Pope vs. Allis 115 US 363 (1885)	12
Rapid Transit Lines vs. Wichita Developers, Inc. 435 F2d 850 (1970)	12
Rathbun vs. United States 355 US 107, 2 L Ed 2d 134, 78 S Ct 161 reh den 355 US 925, 2 L Ed 2d 355	8
Rogers vs. United States 369 F2d 944 (1966), cert den 388 US 922 reh den 389 US 890	9
United States vs. Goldberg 290 F2d 729 (1961)	11

Statutes

18 United States Code, Sections 2510 et seq.
District of Columbia Criminal Code, Section 23-542(b)(3)
California Penal Code, Section 632(c)

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. .

LAURENCE H. FROMMHAGEN, Petitioner,

vs.

BYRON N. SCOTT, Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the District of Columbia Court of Appeals

Petitioner, Laurence H. Frommhagen, respectfully prays that a writ of certiorari issue to review a denial of an appeal by the District of Columbia Court of Appeals on February 28, 1973. A timely petition for rehearing was denied by that Court on April 9, 1973. On July 10, 1973, the Honorable Warren Burger, Chief Justice of the Supreme Court of the United States, granted an extension of time in which to file this petition for writ of certiorari to and including August 1, 1973.

OPINIONS BELOW

The judgments and orders of the District of Columbia Court of Appeals and the District of Columbia Superior Court are shown in the Appendix.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). Petitioner seeks to invoke an exercise of this Court's review for the reasons that the District

of Columbia Court of Appeals has rendered decisions in conflict with decisions of the Supreme Court of the United States and of other courts of appeals and has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

QUESTIONS PRESENTED

1. Did the courts below err by refusing to accept into evidence, for the purpose of impeaching testimony, magnetic tape recordings of telephone conversations between plaintiff and defendant for the reason that plaintiff, who recorded the conversations, did not inform verbally, in so many words, that the conversations were being recorded?

2. Did the courts below err by refusing to accept into evidence, for the purpose of impeaching testimony, the sworn answer of defendant to plaintiff's complaint before a grievance committee attached to another, and separate, court?

STATEMENT OF THE CASE

On February 6, 1969, respondent Byron N. Scott (hereinafter referred to as Scott) and petitioner Laurence H. Frommhagen (hereinafter referred to as Frommhagen) entered into a retainer agreement in which Scott pledged to represent Frommhagen before the United States Supreme Court in the matter of Frommhagen v. Glazer, an appeal then pending in the United States Court of Appeals for the Ninth Circuit should the latter court reject that appeal.

Scott renewed his pledge after the appeals court denied that appeal on April 27, 1971. From the latter date until September 6, 1971, Scott repeatedly assured Frommhagen and Frommhagen's San Francisco attorney that he would file in a timely fashion a petition for writ of certiorari in that action. However, on September 6, 1971, Frommhagen received in the mail from Scott a draft copy of said petition with the notation "pro se" on the cover page. On that day Scott informed the

petitioner that he had decided not to represent him and that Frommhagen was "on his own." The next day Frommhagen's California attorney determined that the last day of the ninety day period in which to file the petition for writ of certiorari had elapsed on the very day Frommhagen received the petition draft from Scott.

Frommhagen immediately filed with this Court an out-of-time application for an extension of time in which to file the petition for writ of certiorari; said application was granted by the Honorable William O. Douglas, Associate Justice of the United States Supreme Court, on September 27, 1971. The petition for writ of certiorari was subsequently filed and, as No. 71-582, was denied without comment on January 17, 1972.

In October of 1971, Frommhagen, anxious that this Court should recognize that the out-of-time filing of the petition was due to the malfeasance of his attorney, initiated the following two actions:

1. An action in the Small Claims Court of the District of Columbia in which Frommhagen prayed for damages in the amount of $600, equal to the retainer he had paid Scott and some small expenses occasioned by the out-of-time application for an extension of time, and

2. A grievance with the Grievance and Admissions Committee of the United States District Court for the District of Columbia in which Frommhagen requested that appropriate disciplinary action be taken against Scott in regard to Scott's false assurances to Frommhagen that he would represent Frommhagen, those assurances having persisted until the last day the petition for writ of certiorari could be filed in a timely fashion.

Scott filed a counterclaim with the Small Claims Court in which he requested $50,000. in damages for Frommhagen's "libelious" statements to the Washington Bar Association as well as $800. for legal fees. By means of that and other legal maneuvers Scott succeeded in having the action in the small claims

court certified to the Superior Court of the District of Columbia and in delaying the trial until May of 1972.

In April of 1972 Scott filed his sworn Answer with the Grievance Committee of the United States District Court in regard to Frommhagen's grievance complaint. That Committee took no action. The processing of the grievance, at Frommhagen's insistence, was resumed, but only after it had been transferred to the newly-formed Disciplinary Board of the District of Columbia Bar in January 1973.

Three days before the trial in Superior Court, that Court conducted a pre-trial conference, at the conclusion of which the Court ordered Frommhagen's complaint as to misconduct on the part of Scott, to be fully adjudicated.

During the trial before the Superior Court of the District of Columbia on May 25 and 26, 1972, Scott testified that during certain telephone conversations he had held with Frommhagen during August of 1971 he had made certain demands of Frommhagen as to additional legal fees and court expenses and as to the printing of the petition for writ of certiorari. In an effort to impeach that testimony, and to demonstrate that such demands had never been made, Frommhagen sought to introduce magnetic tape recordings of the subject telephone conversations. Inasmuch as the judgments and orders of the District of Columbia Appeals Court and Superior Court (see Appendix) fail to comment upon the ruling of the trial judge, said ruling is shown below, as excerpted from the official transcript of the hearing:

> THE COURT: Well, I am ready to rule. I will exclude the recording of the telephone conversations. First of all, in the exercise of my discretion I feel that I have heard ample evidence from the testimony here so that it is questionable whether it is even advisable to go to this length purely on impeachment purposes, but aside from that I have serious doubts as to whether the requirements of the

Federal Communications Commission have really been complied with if you did not explicitly tell the man that your conversation is being recorded. Now there are variations and implications as in every case so it could be argued as you do here that a beep tone puts him on notice so you don't have to tell him, but a beep tone could mean a lot of things. An express statement that you are being recorded can mean only one thing, "you are being recorded" but in the circumstances of this case I don't propose to hear the tape recordings. Let the record show that the plaintiff has them in court. They are available to be played but the Court excluded them so it is on the record-your position is well stated. If you wish to protect yourself further you can, and I give you leave to do it, file a short written statement of the cases you rely on, to be filed in this case so it will show your position even more clearly.

At another point in his testimony Scott asserted that he had known that the ninety day period for filing the petition for writ of certiorari tolled from the day of entry of the court's denial of the petition for rehearing. However, in his sworn Answer to the Grievance Committee Scott admitted that he had believed erroneously that said period tolled from the day the Appeals Court issued its mandate. Frommhagen's attempt to introduce that sworn Answer of Scott was met with the following ruling by the trial judge:

> THE COURT: All right. Here's my ruling. Normally, prior inconsistencies, statements, or statements made before the time of trial by one of the parties can be used to impeach. I know of no case where subsequent- that is subsequent statements made after the matter

> in question, but before the trial was completed, have been used as the basis for impeachment. It is conceivable that you could look at this document here as an impeachment document which is prior to this trial and after this incident, and therefore let it in. However, it seems to me that since this is a matter before the Grievance Committee, I am going to leave it there and in exercising my discretion, I will rule that I will exclude it.

On June 7, 1972, the Superior Court rendered the Memorandum Order shown in the Appendix herein. No mention was made in that decision as to the Court's rulings on the admissibility of the recordings of the telephone conversations and Scott's sworn statement before the Grievance Committee. In that decision the Court ruled against Frommhagen's claim for $600. and Scott's counterclaim for $50,800.

Frommhagen appealed to the District of Columbia Court of Appeals and urged as the two principal issues those same two issues he now poses to this Court in this petition.

In October of 1972, shortly after he had filed his opening brief in the District of Columbia Court of Appeals, Frommhagen disappeared from his habitat in California and was found four weeks later in a semi-conscious state. In December 1972, Frommhagen, who had been assured by his physician that his amnesia would relent in a short time and who indeed was remembering much after reviewing his records, requested the Court of Appeals, which had noticed oral argument in the appeal for December 10, 1972, and the Grievance Committee, to suspend all further action until he regained his full faculties. The Court of Appeals responded by ordering the matter submitted on the briefs without oral argument. The Disciplinary Board of the District of Columbia Bar notified Frommhagen on January 4, 1973, that his grievance, posted in October of 1971, had been transferred to that Board and on January 22, 1973, notified Frommhagen that the grievance had been dismissed. That Board did not

respond to earlier requests by Frommhagen for the opportunity to submit further evidence, including the tape recordings of the telephone conversations, and has not replied to Frommhagen's request for a reopening of the proceeding.

On February 23, 1973, the District of Columbia issued the order denying the appeal in Frommhagen vs. Scott. Despite a plea by Frommhagen in his petition for rehearing that the Court render an opinion, the Court did not do so.

On three separate occasions in November 1971, April 1972, and July 1972, the chairman of the Grievance Committee informed Frommhagen that the decision of the Superior Court would be controlling in regard to any action by that Committee on the grievance complaint.

In April of 1973, as disclosed in a newspaper article shown in the Appendix at page v., the Sheriff of Santa Cruz County, California, announced that no definitive explanation had been found for the disappearance of Frommhagen in October 1972 and stated it was possible that Frommhagen had been drugged.

Parenthetically it is noted that Frommhagen, during a hearing before the United States Civil Service Commission in regard to his dismissal in 1968 from the National Aeronautics and Space Administration (NASA), sought to introduce into evidence tape recordings of telephone conversations between federal officials, who were his superiors, and himself in order to impeach their testimony. The hearing examiner refused to listen, much less to agree to the introduction of, those tape recordings, and NASA officials threatened legal action against Frommhagen if he disclosed those recordings. The ruling of the hearing examiner was identical to that of the trial judge in Frommhagen v. Scott.

REASONS FOR GRANTING THE WRIT

The circumstances in this entire matter indicate that forces were at work to prevent a fair adjudication of petitioner's complaints against a member of the Bar of the District of Columbia. The District of

Columbia Superior Court, which explicitly agreed to adjudicate the complaints, barred evidence on the ground that the Grievance Committee was considering the complaints and then proceeded to rule on those complaints. On the other hand, the Grievance Committee took the position that, under the circumstances, it was the task of the Superior Court to adjudicate the complaints. The net effect was that Frommhagen was prevented from introducing very vital evidence in both proceedings.

I. THE DECISION BELOW IN REGARD TO THE LEGALITY AND ADMISSIBILITY OF CONSENSUAL RECORDINGS OF TELEPHONE CONVERSATIONS CONFLICTS WITH THE DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS.

The District of Columbia Court of Appeals, in finding no error on the part of the lower court, has thereby established for that jurisdiction the rule that a party who records a telephone conversation, with or without beep tones being interjected at regular intervals during the conversation, is in violation of the regulations of the Federal Communications Commission if that party does not verbally apprise, in so many words, the other party to the conversation that the conversation is being recorded, and for that reason, the recordings are inadmissible as evidence, even for the purpose of impeaching the testimony of a witness.

That ruling collides with the opinion of this Court in Rathbun vs. United States, (1957) 355 US 107, 2 L Ed 2 134, 78 S Ct 161, reh den 355 US 925, 2 L Ed 2d 355, 78 S Ct 363. In that decision this Court ruled that the contents of a communication overheard on a regularly used telephone extension with the consent of one party are admissible in federal courts, that such communications are not privileged, and that the consenting party may use such a communication to his own benefit.

Following the reasoning of Rathbun the Fifth Circuit Court of Appeals in Carnes vs. United States, (1961) 295 F2d 598, cert den 369 US 861, 8 L Ed 2d 19, 82 S Ct 949, and the Tenth Circuit Court of

Appeals in Rogers vs. United States, (1966) 369 F2d 944, cert den 388 US 922, 18 L Ed 2d 1371, 87 S Ct 2125, reh den 389 US 890, 19 L Ed 2d 205, 88 S Ct 20, held that recordings of telephone conversations made by only one party to the conversation without the knowledge of the other party were not interceptions within the meaning of the regulations of the Federal Communications Commission and thus were admissible as evidence in the federal court.

The Eighth Circuit Court of Appeals in Meredith vs. Gavin (1971) 446 F2d 794 ruled that the recording, and disclosure of the recording to protect the valid interests of the recorder, of a telephone conversation without the knowledge of the other party is not violative of the federal wiretapping statutes at 18 U.S.C.A., Sections 2510 et seq., unless such recording and disclosure of recordings is done with an evil purpose, that is, to commit or attempt a criminal or tortious act. It is noted that the applicable statute of the District of Columbia, namely Section 23-542(b)(3) of the District of Columbia Criminal Code, which controlled at the time of the trial in this action, is a carbon copy of 18 U.S.C.A., Section 2511(2)(c,d). The latter two statutes specifically permit consensual recordings of telephone conversations, that is, with the consent of only one party, unless the purpose in making and disclosing those recordings is evil. Section 632(c) of the California Penal Code, operative at all times when Frommhagen was making those recordings, also permits consensual recordings of telephone conversations. The decision of the California Supreme Court in People vs. Canard (1967) 257 C.A. 2d 444 is in conformity with the rulings of the federal Appeals Courts previously cited herein.

During the preparation of this petition the issue of the legality and admissibility of consensual recordings of telephone conversations has come into sharp focus as a result of the disclosure that the President of the United States, Richard M. Nixon, has consented since April 1971 to the recording of his telephone conversations without the knowledge of the other parties to the conversations. There appears to be no question that

this practice of the President is legal and that disclosure of those recordings, either in his defense or in his prosecution, would also be legal. Indeed the Senate Select Committee on Presidential Campaign Activities as well as Special Prosecutor Archibald Cox have demanded the disclosure of those tape recordings and, on July 23, 1973, subpoenaed the President to disclose those recordings.

It is also noted that the same Senate Select Committee introduced into the record of its public proceeding a recording of a telephone conversation between John D. Ehrlichman and Herbert W. Kalmbach made by Ehrlichman without Kalmbach's knowledge. Neither Kalmbach, his attorney, or anyone else has objected on legal grounds to the admission of those tape recordings.

Petitioner asserts that the District of Columbia Courts are perfectly aware of the fallacious nature of their ruling in Frommhagen vs. Scott, as reflected in the refusal of the District of Columbia Court of Appeals to render an opinion in that appeal or to permit oral argument. Those courts were intent on suppressing that evidence, as was also the Grievance Committee, a denial of due process which merits and requires the supervision of this Court. To add insult to injury the District of Columbia Superior Court, sanctioned by the Court of Appeals, barred the impeachment evidence and then turned around and accepted the uncorroborated, self-serving testimony of Scott to the effect that there had been disputes between Scott and Frommhagen.

II. THE DECISION BELOW BARRING ADMISSION OF A SWORN EXTRAJUDICIAL STATEMENT IS IN CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS AND CONSTITUTES A RADICAL AND UNACCEPTABLE DEPARTURE FROM ACCEPTED JUDICIAL PROCESS.

It is stated in Wigmore on Evidence, Chadbourne Edition (1972):

> Section 1048: The statements made out of court by a party-opponent are universally deemed admissible, when offered against him. (Emphasis added)

> Section 1048(4): The probative value, therefore, of the use of admissions is twofold: In the first place, all admissions may furnish, as against the opponent, the same discrediting inference as that which may be made against a witness in consequence of a prior self-contradiction; the nature of this inference, both in its strength and in its weakness, has been already examined in Section 1018 and need not here be reconsidered. In the next place, all admissions, used against the opponent, satisfy the hearsay rule, and, when once in, have such testimonial value as belongs to an testimonial assertion under the circumstances; and the more notably they run counter to the natural bias or interest of the party when made, the more credible they become; this element adding to their probative value, but not being essential to their admissibility.

Upon those tenets federal Courts of Appeals have held that an extrajudicial statement of a party to any action, criminal or civil, are binding upon him and substantive evidence against him. See Harrison vs. United States (10th Cir. 1930) 42 F2d 736; Gonzales vs. Landon (9th Cir. 1954) 215 F2d 955; United States vs. Goldberg (2d Cir. 1961) 290 F2d 729; Butler vs. Southern Pacific Co. (5th Cir. 1970) 431 F2d 77, 80.

The ruling of the District of Columbia Superior Court. as countenanced by the District of Columbia Court of Appeals, whereby the Court excluded Scott's sworn statement before the Grievance Committee, an administrative committee of another court, represents a radical departure from the rulings of other Appeals Courts and from the universal practice of all courts, which requires the supervision of this Court.

Even assuming, arguendo, that the grievance proceeding, due to the fact that it was under the auspices of a federal court, was a collateral judicial or quasi-judicial proceeding, which petitioner denies, it has

also been held universally that pleadings in other actions, attested to by parties, are admissible in another judicial proceeding. This Court in Pope vs. Allis (1885) 115 US 363, established that pleadings in equity or in law, if sworn by the party, are receivable as a "solemn admission." Other Appeals Courts have hewed to that principle. See Frank R. Jelleff, Inc. vs. Braden (D.C. Cir. 1956), 233 F2d 671; Great American Ind. Co. vs. Rose (5th Cir. 1957) 242 F2d 269; Rapid Transit Lines, Inc. vs. Wichita Developers, Inc. (10th Cir. 1970) 435 F2d 850.

There is no rationale for excluding impeachment evidence from a collateral grievance proceeding, particularly when, as in this case, it was agreed that the court decision would control. However, those courts were determined that the truth regarding a member of their Bar would not see the light of day. Petitioner is very certain that those Courts and Mr. Scott, a member of the Bar of this Court and of the District of Columbia, realized that Scott intentionally defaulted upon his obligation either to represent Frommhagen or to give Frommhagen sufficient advance notice of the termination of their relationship so that Frommhagen's position in this Court would not be prejudiced. How can it be expected that Frommhagen or any other person can have confidence in the courts, the grievances committees, and the bar associations when a travesty such as this has been allowed to take place ??

CONCLUSION

For the reasons stated, petitioner requests that a writ of certiorari issue to review the judgments and orders of the District of Columbia Court of Appeals.

Dated: July 26, 1973, Soquel, California

Respectfully submitted,

LAURENCE H. FROMMHAGEN
Pro Se

(Appendix Follows)

APPENDIX

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

LAURENCE H. FROMMHAGEN	)	Civil Action
Plaintiff	)	No. 656-72
v.	)	
BYRON N. SCOTT	)	
Defendant)		

MEMORANDUM ORDER

This matter was heard by the Court without a jury.

Plaintiff in this matter seeks damages, alleging that defendant, an attorney, failed to meet the obligations of a retainer agreement. In turn, the counterclaim seeks recovery for services rendered and, in addition, alleges libel.

Testimony in the case has been extensive and covers a period beginning in October 1967 and ending in September 1971.

In essence, the evidence shows that plaintiff, at the time of meeting defendant in 1967, was already engaged in litigation as to questions relating to his employment with a federal agency. Anticipating appeals through the federal court system, in 1969 the parties signed a document (Exhibit 1) calling for payment of $250.00 as a retainer. It further recites that services will cost $25.00 per hour and that a "refresher was to be paid if more than 10 hours." No money was paid at that time. Both parties agree that a primary purpose of the retainer was representation of the plaintiff in the United States Supreme Court. Plaintiff was represented by other attorneys in the federal courts in California. In June 1969, $250.00 was paid to defendant. During the period in question, there were numerous telephone conversations and exchanges of written correspondence. As the time for filing pleadings before the Supreme Court approached,

a dispute arose and plaintiff ultimately was represented in that Court by other counsel. He subsequently wrote a letter of complaint to the Washington Bar Association and that letter is the basis for the libel counterclaim.

It should be noted that there is conflict in the testimony as to many of the details of the above-stated circumstances. As pertinent, these matters will be treated more fully.

A pivotal question in this case is, of course, what, if any, agreement did the parties reach? It is clear that the written memorandum (Exhibit 1) does not purport to be the entire understanding of the parties. Plaintiff states that defendant was to represent him before the Supreme Court and write a draft brief to be presented to the Court of Appeals. He maintains that consultations on related matters were to be uncompensated. Defendant agrees that he was to represent the plaintiff in the Supreme Court provided certain conditions were met. His version of the relationship differs. He asserts he was to be paid for all services rendered; he was to review matters submitted to the Court of Appeals and that Court costs and fees were to be paid by plaintiff prior to action in court.

This Court finds that there was no meeting of the minds on the agreement asserted by plaintiff. Indeed some of the correspondence between the parties indicates an uncertainity in this regard. See Exhibits 5 and 7. Additionally, it is unlikely that the numerous consultations and inquiries directed to defendant were to be performed without compensation. See Exhibits 2, 3, 4 and 9.

It is concluded that defendant has performed legal services for the money received.

Plaintiff also urges that defendant was negligent in the performance of his duties as an attorney. More specifically, it is asserted that defendant's conduct unreasonably jeopardized plaintiff's case in the Supreme Court. This is a closer question. It is clear plaintiff made repeated requests regarding the matter. Defendant responds that questions of attorney's fees, court costs, printing costs were unresolved. Defendant was to come

to Washington, D.C. but failed to do so. In such circumstances, defendant states he refused to sign the petition as counsel without control over its final form of printing.

In evaluating this latter claim, it is readily seen that there are circumstances which support both parties to this dispute. It is apparent that plaintiff relied upon defendant for certain representation. However, it is equally clear that lawyers do not normally relinquish control of editing and printings of pleadings to the client. Other illustrations of this type of counterbalance can be cited.

The Court finds that the evidence on this record does not rise to the level of proof by the preponderance of negligence.

Similarly, defendant's counterclaims must meet the same fate. The count in contract is not supported by a preponderance of evidence.

The claim of libel suffers from inadequate proof of malice. But passing that point, the Court finds that the qualified privilege to speak on matters of common interest and to protect one's own interest was properly and reasonably exercised in this instance.

It should be noted that this Court is aware of grievances now pending before the Grievance Committee. Naturally, I have no authority in that regard and thus have striven to insulate that proceeding from the present one.

It is ORDERED that the trial finding and judgment be against plaintiff on its primary claim.

It is further ORDERED that the trial finding and judgment be against counterclaimant on the counterclaims.

WILLIAM C. PRYOR
Judge

Dated: June 7, 1972

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 6703 January Term, 1973

LAURENCE H. FROMMHAGEN, Appellant,

v. CA 656-72

BYRON N. SCOTT, Appellee.

Appeal from the Superior Court
of the District of Columbia
Civil Division

BEFORE: Pair, Yeagley and Harris, Associate Judges

J U D G M E N T

This case came on to be heard upon the record from the Civil Division of the Superior Court of the District of Columbia and, without argument, was submitted on the briefs of counsel.

Upon consideration whereof and after review of the record and briefs, the court is of the opinion that the judgment of the trial court is supported by the evidence and is not plainly erroneous, from which it follows that this court may not substitute its judgment. D.C. Code 1967, Section 17-305 (Supp. V, 1972).

Accordingly, it is this 28th day of February 1973,

ORDERED and ADJUDGED that the judgment of the trial court be, and the same is hereby, affirmed.

PER CURIAM.
FOR THE COURT:
ALEXANDER L. STEVAS
CLERK

v.

DISTRICT OF COLUMBIA
COURT OF APPEALS

Filed April 9, 1973

No. 6703 January Term, 1973

LAURENCE H. FROMMHAGEN,

Appellant,

v.

CA-656-72

BYRON N. SCOTT,

Appellee.

BEFORE: Reilly, Chief Judge, Kelly, Fickling, Kern, Gallagher, Nebeker, Pair, Yeagley and Harris, Associate Judges.

O R D E R

On consideration of appellant's petition for rehearing en banc and it appearing that no judge has called for a vote on said petition, it is

ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

Santa Cruz Sentinel - Sunday, April 22, 1973- Page 21

FROMMHAGEN PLANS TO TAKE CANDIDACY ISSUE TO COURT

Laurence Frommhagen of Soquel expects to argue his case for being an independent candidate for Congress before the U.S. Supreme Court in November.

He said his two main points of contention are that independent candidates cannot be certified until two months before a general election, while party candidates make announcements some eight months in advance of an election.

Also, that members of political parties are not allowed to sign nomination papers of an independent candidate. Frommhagen claims both provisions are in violation of the equal protection clause of the U.S. Constitution.

Frommhagen became disillusioned with both major political parties and last year attempted to run for Congress as an independent candidate. However, his name was barred from the ballot for a state election law that says a person can't run as an independent if he has been registered with a party within a year preceding a primary election.

Frommhagen, who was missing for three weeks from October 15, said an investigation in that case is continuing. He does not remember what happened in that period, but Sheriff's detective Ken Foster said "we can't doubt the possibility that someone drugged him. Our investigation at this point is at a standstill."

The last thing Frommhagen recalls at that time is walking to his car from a restaurant on Route 280 near San Francisco. He was found again on Nov. 9.

He said he is concerned that the incident "has placed a cloud on my name," but that he plans to pursue finding out what may have happened during those three weeks.